

JENNIFER ANN JASMAINE
f/k/a DUANE L. FOX,

Plaintiff,

vs.

NORTH CAROLINA PRISON
LEGAL SERVICES,

Defendant.

THIS MATTER is before the Court on the Plaintiff’s Pro Se “Motion to Dismiss Pursuant to FRAP 42(b)” [Doc. 26], Defendant’s Motion to Dismiss [Doc. 22], and following Plaintiff’s failure to respond to the Court’s Order dated June 11, 2019 seeking clarification on Plaintiff’s motion to dismiss [Doc. 27].

On its original initial review of Plaintiff’s Complaint brought under 42 U.S.C. § 1983, this Court dismissed Plaintiff’s Complaint for failure to state a claim. [Doc. 5]. The Plaintiff appealed that dismissal. [Doc. 8]. The Fourth Circuit Court of Appeals vacated the dismissal, holding that the “District Court did not adequately justify its dismissal.” [Doc. 15]. On remand, this Court ordered that Plaintiff’s Complaint survived initial review and ordered the Defendant to answer or otherwise respond to Plaintiff’s Complaint.

On March 5, 2019, Defendant moved to dismiss Plaintiff's Complaint for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. [Doc. 22]. On March 21, 2019, the Court issued an Order advising Plaintiff of her right to respond to the motion to dismiss within fourteen (14) days of that Order. [Doc. 24]. Plaintiff did not respond.

On June 7, 2019, the Plaintiff moved “to voluntarily dismiss this proceeding pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure [FRAP].” [Doc. 26]. Plaintiff further stated that she “understands that this proceeding will be dismissed and cannot be reinstated at a later date.” [Id.]. Under Rule 42(b) of the FRAP, before an appeal has been docketed, the district court may dismiss an appeal on the appellant’s motion with notice to all parties. Fed. R. App. P. 42(b).


Because the Plaintiff appealed the Court’s original Order dismissing Plaintiff’s Complaint and because Plaintiff cited the Federal Rule of Appellate Procedure on dismissal, rather than the applicable Rule of Civil Procedure, the Court sought clarification from the Plaintiff before ruling on the Plaintiff’s motion to dismiss. Over two months have passed, and the Plaintiff has failed to respond to the Court’s request for clarification.

Therefore, given the Plaintiff’s failure to prosecute this action and her apparent intention to dismiss it, the Court will dismiss this action without prejudice.

IT IS, THEREFORE, ORDERED that:

- (1) This action is dismissed without prejudice.
- (2) Defendant’s Motion to Dismiss [Doc. 22] and Plaintiff’s Pro Se Motion to Dismiss [Doc. 26] are **DENIED** as moot.
- (3) The Clerk of this Court is directed to terminate this action.

Signed: August 19, 2019


Frank D. Whitney
Chief United States District Judge 